



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of )  
Green )  
Serial Number: 09/073,643 )  
Filed: 05/06/98 )  
For: Garden Tool Having )  
Enhanced Leverage )  
(as amended) )

Examiner Petravick  
Group Art Unit 3671  
**APPEAL BRIEF**

**RECEIVED**

MAR 17 2004

Commissioner for Patents  
Alexandria, VA 22313-1450

**GROUP 3600**

**APPEAL BRIEF**

1. Real Party in Interest. Patricia G. Green, under assignment filed December 29, 2003 (copy attached).
2. Related Appeals and Interferences. None.
3. Status of Claims. Claims 1-13 are canceled. Claims 14-16 are pending.
4. Status of Amendments. Entered. Refer to the Amendment After Final for editorial corrections to claims 15 and 16.

03/15/2004 SFELEKE1 00000144 09073643

02 FC:2402

165.00 OP

CERTIFICATE OF MAILING  
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH  
SUFFICIENT POSTAGE AS FIRST CLASS MAIL IN AN ENVELOPE  
ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS,  
WASHINGTON, D.C. 20231 ON 3-9-04

DATE

J.A. RATH

NAME OF PERSON MAKING DEPOSIT

J.A. RATH

SIGNATURE

3-9-04

DATE OF SIGNATURE

Charge or credit any  
fees to Deposit Acct.  
No. 10-0230

5. Summary of Invention. The invention is a hand held garden rake configured to enhance downward force for digging and raking. The rake has a rod frame which extends from tines located at the front end of the rake to a brace located at the rear of the rake. The frame is bent to extend back toward the front end of the rake, at which point the frame terminates in an upwardly extending handle. The brace rests on the forearm, so that additional force is developed when the tines of the rake are urged downwardly into the ground. The vertical orientation of the handle is more natural and comfortable than would be a horizontal orientation. The handle is provided with a molded grip for cooperating with a user's hand. The brace has a resilient cushion for comfort when pressing downwardly on the tines.

6. Issues. 35 USC 103 over Maguire in view of Pfister.

7. Grouping of Claims. Claims 14-16.

8. Arguments. There is no teaching in the combination of references of Maguire in view of Pfister to combine the two references, nor is there a reference suggesting the combination of the two references. While it is considered obvious by the Examiner, if it were to be so obvious, then the Examiner would obviously have a teaching of the obviousness. To resolve the issue of obviousness, it is suggested that the claim could be amended to insert the word "permanently" in front of "attached" (line 5 of independent claim 14) as Maguire teaches a rake or a hoe which is removably attached to the implement holder by inserting the handle of the rake or hoe into the clamps. Pfister's working element consists of three tines attached to the frame.

Claims 15 and 16 further limit claim 14.

9. Conclusion. In conclusion, the Examiner's rejection should now be reversed.

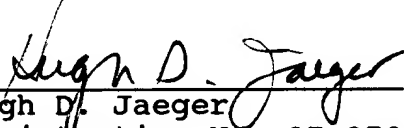
If there are any further issues yet to be resolved to advance the prosecution of this patent application to issue, the Examiner is requested to telephone the undersigned counsel so that such issues may be resolved expeditiously.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

HUGH D. JAEGER, P.A.

By

  
Hugh D. Jaeger  
Registration No. 27,270  
1000 Superior Blvd., Suite 302  
Wayzata, MN 55391-1873  
Telephone: 952-475-1880  
Facsimile: 952-475-2930

03/08/2004

MYFILES\PLEAD\PL4332

#### CLAIM APPENDIX

14. A hand held gardening implement, comprising:
  - a. a frame having a longitudinal axis, a proximal end, and a distal end;
  - b. a working element for piercing the ground in the performance of a gardening operation attached to said frame at said proximal end of said frame, said working element projecting away from said frame in a direction which is substantially transverse to the longitudinal axis of said frame;
  - c. a brace attached to said frame at the distal end of said frame, said brace including a cushion having a surface oriented for contacting an upwardly directed portion of the forearm of a user of the gardening implement;
  - d. a handle intermediate said working element and said brace, said handle projecting away from said frame in a direction which is substantially transverse to the longitudinal axis of said frame and which is opposite to the direction in which said working element projects from said frame, said handle including a resilient grip; and,
  - e. said brace, except for said cushion thereof, and said frame being formed of circular metallic rod stock.
15. The hand held gardening implement as defined in claim 14, wherein said working element consists of a plurality of tines.
16. The hand held gardening implement as defined in claim 14, wherein said working element consists of a digging tool.

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Tab settings    ▼

**To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.**

Janie McKittrick

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## Assignment

**Q Merger**

☐ **Security Agreement**

☐ **Change of Name**☐ Other

Execution Date: 12/03/2003

Name: Patricia G. Greene

8900 Minnetonka Blvd.

St. Louis Park, MN 55426

Additional name(s) & address(es) attached? ☐ Yes ☒ No

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

**A. Patent Application No.(s)**

09/073,643 05/06/1998

**B. Patent No.(s)**

Additional numbers attached? ☐ Yes ☒ No

Name: Hugh D. Jaeger

1000 Superior Blvd., Suite 302

Wayzata, MN 55391-1873

**6. Total number of applications and patents involved:**

1

7. Total fee (37 CFR 3.41).....\$ 40.00

**Enclosed**

additional  
☒ Authorized to be charged to deposit account  
 10-0230

**8. Deposit account number:**

**(Attach duplicate copy of this page if paying by deposit account)**

DO NOT USE THIS SPACE

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Hugh D. Jaeger

**Name of Person Signing**

**Signature**

Date \_\_\_\_\_

**Total number of pages including cover sheet, attachments, and document:**

**Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231**

## ASSIGNMENT OF APPLICATION

Docket Number (Optional)

Whereas, I/We, Janie McKittrick of Forest Lake, Minnesota, hereafter referred to as applicant, have invented certain new and useful improvements in GARDEN TOOL HAVING ENHANCED LEVERAGE (as amended)

☒ for which an application for a United States Patent was filed on 05/06/1998  
Application Number 09/ 073,643

☐ for which an application for a United States Patent was executed on \_\_\_\_\_, and

Whereas, Patricia G. Greene of St. Louis Park, Minnesota herein referred to "assignee" whose mailing address is 8900 Minnetonka Blvd., St. Louis Park, MN is 55426 desirous of acquiring the entire right, title and interest in the same;

Now, therefore, in consideration of the sum of one dollars (\$ 1.00 ), the receipt whereof is acknowledged, and other good and valuable consideration, I/We, the applicant(s), by these presents do sell, assign and transfer unto said assignee the full and exclusive right to the said invention in the United States and the entire right, title and interest in and to any and all Patents which may be granted therefor in the United States. I/We hereby authorize and request the Commissioner of Patent and Trademarks to issue said United States Patent to said assignee, of the entire right, title, and interest in and to the same, for his sole use and behoof; and for the use and behoof of his legal representatives, to the full end of the term for which said Patent may be granted, as fully and entirely as the same would have been held by me had this assignment and sale not been made.

Executed this Friday 12<sup>th</sup> day of December, 2003  
at Wells Fargo Bank

Janie McKittrick  
(Signature)

State of MN  
County of Washington SS:

Before me personally appeared said Janie A McKittrick  
and acknowledged the foregoing instrument to be his free act and deed this 12<sup>th</sup>  
day of December, 2003.

Seal



KATHLEEN M. BEADER  
Notary Public  
Minnesota

My Commission Expires Jan. 31, 2005

Kathleen M Beader  
(Notary Public)

Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. See below.

\* ☐ Total of \_\_\_\_\_ forms are submitted.

This form offers a sample or suggested format for an assignment document. This sample form is not an OMB officially approved form.

HUGH D. JAEGER, P. A.  
1000 SUPERIOR BLVD., SUITE 302  
WAYZATA, MN 55391-1873  
PH 952-475-1880

MCKITTRICK 09/073,643  
ASSIGNMENT RECORDATION FEE

28864

17-2/910 3048

DATE 12/23/03

PAY  
TO THE  
ORDER OF

COMMISSIONER OF PATENTS & TRADEMARKS

\$ \*40.00\*

FORTY & 00/100

DOLLARS



usbank.com

FOR

⑈0000028864⑈ ⑆091000022⑆ 106048032051⑈

payable to MCKITTRICK LAURET NO. \_\_\_\_\_  
Serial No. 09/073,643 Filing Date: 5-6-98  
for: GARDEN TOOL HAVING ENHANCED LEVERAGE  
(AS AMENDED)  
were received in the Patent and Trademark Office Mail Room on the date stamped hereon  

<input type="checkbox"/> Letter	<input type="checkbox"/> Continuation Patent Application
<input type="checkbox"/> Patent Application	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Pages Specification	<input type="checkbox"/> Appeal Brief
<input type="checkbox"/> Claims	<input type="checkbox"/> Trademark Application
<input type="checkbox"/> Declaration or Oath	<input type="checkbox"/> Intent to Use Trademark Application
<input type="checkbox"/> Power of Attorney	<input type="checkbox"/> Specimens
<input checked="" type="checkbox"/> Assignment & PTO-1595	<input type="checkbox"/> Petition
<input type="checkbox"/> Small Business Entity Statement	<input type="checkbox"/> Communication
<input type="checkbox"/> Independent Inventor Statement	<input type="checkbox"/> Extension of Time
<input type="checkbox"/> Amendment	<input type="checkbox"/> Information Disclosure Statement
<input type="checkbox"/> Drawings Sheet(s)	<input type="checkbox"/> PCT Application
<input type="checkbox"/> Issue Fee Transmittal	<input checked="" type="checkbox"/> Check No. <u>28864</u> for \$ <u>40.00</u>
<input type="checkbox"/> Transmittal of Formal Drawings	Other: <u>1ST CLASS MAIL</u>

RECEIVED

JAN 05 2004

LAW OFFICE OF  
HUGH D. JAEGER, P.A.



HUGH D. JAEGER  
ATTORNEY & COUNSELOR AT LAW  
1000 SUPERIOR BLVD., SUITE 302  
WAYZATA, MN 55391 1873, U.S.A.